

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK *ex rel.*  
Attorney General DENNIS C. VACCO, *et al.*,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

FILED UNDER SEAL

Civil Action No. 98-1233 (TPJ)

DIRECT TESTIMONY OF JIM BARKSDALE

## INTRODUCTION

1. Since January of 1995, I have been the President and Chief Executive Officer of Netscape Communications Corporation ("Netscape").
2. I submit this written testimony in the consolidated matter of *United States v. Microsoft Corporation*, Civ. No. 98-1232, and *State of New York et al. v. Microsoft Corporation*, Civ. No. 98-1233 in accordance with the Court's Pretrial Order.
3. My statement will be presented in several sections below. Before moving into the more detailed discussions, however, I would like to state at the outset why I believe this case is so important not only for the software industry and the consumers of its products, but for the future of the Internet and electronic commerce. As I will detail in the pages to follow, Netscape is as innovative a company as exists. One of its founders, Marc Andreessen, is credited with being the inventor of the graphical browser, a software product which helped to open the Internet and the World Wide Web (the "Web") to consumers and to make possible the remarkable advances in electronic communications and commerce that have occurred in the four years since Netscape was incorporated. Through the extraordinary talents and efforts of its workforce, Netscape has created browser products, like the Netscape Navigator and the Netscape Communicator, which have won great critical acclaim and been extremely popular with consumers. However, because Microsoft Corporation

("Microsoft") determined that such products were a threat to Microsoft's Windows operating system software ("Windows") -- the software at the heart of over 90% of all personal computers in the world -- Microsoft set out to use its vast power as the producer of Windows to "cut off Netscape's air supply." It did this in a variety of ways, including, for example, by entering into exclusionary contracts and otherwise limiting Netscape's most important avenues of distribution for its software products; by refashioning its Windows software to disadvantage non-Microsoft browsers; by offering its browser product, Internet Explorer, at no cost and sometimes paying customers to switch from Navigator to Internet Explorer, even when Internet Explorer was intended for use with the Mac and UNIX operating systems ("OS") rather than Windows; and by unduly pressuring and intimidating Netscape's customers and potential customers.

4. I have been in business for many years, and Netscape and I know how to compete in a competitive marketplace. Microsoft's behavior over the last three years, however, indicates that the current software marketplace is not a competitive marketplace. Microsoft's monopoly control of the Windows OS software, and Microsoft's ability to improperly exercise the power associated with that control, allow Microsoft to cripple or cut off altogether innovative products that will benefit consumers if Microsoft deems those products to be too competitive with Windows or Microsoft's other software products. The

effectiveness of its power and its determination to use it became especially clear to me on two occasions during the last three years.

5. The first occurred in 1996. Compaq Computer Corporation ("Compaq") had decided to replace Internet Explorer with Netscape Navigator on a popular line of computers it shipped. Shortly after this decision was made, I heard that Microsoft threatened to cancel Compaq's Windows 95 license, which would effectively kill Compaq's OEM business. Although Compaq wanted to feature the Netscape Navigator icon on the desktops of Compaq computers, reflecting the popularity of the Netscape Navigator with consumers, Netscape learned that Compaq no longer intended to put Navigator on the desktop shortly after Microsoft threatened to cancel Compaq's Windows license. In this instance, Microsoft clearly used the power of its monopoly product to force a distributor to ship a separate new product. Thus, Microsoft was able effectively to destroy the value of Netscape's browser-distribution contract with Compaq, one of the world's largest PC manufacturers.
6. The second occasion was in October 1997, when I was present at a conference convened by Forrester Research Inc. ("Forrester"). The attendees at the conference consisted of approximately 200 corporate executives, many of whom were chief information officers. In connection with the presentations, the attendees were polled on several technology-related questions, and provided their answers through hand-held electronic devices. What struck

me was the response to the following question: "If Microsoft's Internet Explorer browser was not bundled free with Windows, would your company be less likely to use it?" Eighty-one percent (81%) of the 203 respondents to that questions answered "yes." Again, the power associated with the Windows franchise, and Microsoft's ability and willingness to abuse that power in the face of a threat from a popular and innovative competitive product, became crystal clear. This poll of corporate executives demonstrated to me how effective Microsoft had been by tying its monopoly product to its browser and giving away its browser, after spending hundreds of millions of dollars to produce and distribute it.

7. Throughout the duration of the governments' browser-related investigations of Microsoft's behavior, up to and including the events leading to this trial, Microsoft has tried to position Netscape as a "whiner" who can't compete in the marketplace. Nothing could be further from the truth. Netscape has shown an amazing ability to withstand the kinds of anticompetitive pressures Microsoft has put on it, and has been strong enough and innovative enough to re-invent its business model in the face of the slew of Microsoft actions designed to "cut off Netscape's air supply." I understand the pushes and pulls of competitive marketplaces; I understand that bullying and tough tactics do not necessarily violate any laws. But I also understand monopoly power and how it can be abused. My first job was as a salesman for IBM, and I learned

there through rigorous sales training that there is a legal limit, a place where bullying and tough tactics by a monopolist cross a line that should not and cannot be crossed. It is my view, based on what I have experienced and seen in the last several years, that Microsoft's behaviors have crossed that line.

8. I often ask people where browser technology would be today had Netscape not come along, and the response is uniform: it would be far behind where it is now. Many people have opined that, had Netscape not been willing and strong enough to look Microsoft in the eye and bring the browser to market, we would not have browsers (or anything like browsers) in the marketplace at all, meaning, of course, that the Internet and the Web would also not have developed as they have for widespread commercial and communications use. The software industry is watching this case closely, for if Microsoft is permitted to use its Windows-derived monopoly power to "cut off the air supply" of innovative products that threaten Windows and innovative companies that compete with Microsoft, there are few, if any, other companies that will try to do what Netscape has done. If this occurs, consumers and innovation will surely suffer.
9. The remainder of this statement will discuss more particularly various facts relating to this case. I will discuss these facts in two ways. In the first portion of the statement, I will discuss many of the facts in a summary form, without reference to specific exhibits or citations. Then, in the remainder of

the statement, I will discuss the facts in a more detailed way, complete with references to exhibits and citations. In these sections, my discussion of the facts will be organized in the following manner:

i. I will begin with Netscape's early history, including a discussion of my background as well as that of the founders of the company, Jim Clark and Marc Andreessen; a discussion of Netscape's highly successful development and marketing of browsers; a discussion of how the development of browsers led to the commercialization of the Internet and the Web; and a discussion of how the Netscape browser, as well as the Java programming language developed by Sun Microsystems, Inc. ("Sun"), posed a threat to Windows.

ii. I will then discuss Microsoft's responses to the success of Netscape and its browser products, including a discussion of Microsoft's efforts to divide the market and, when those efforts were not successful, Microsoft's various exclusionary, restrictive, and predatory actions undertaken to harm Netscape and its products, including actions designed to foreclose our access to key channels of browser distribution: Internet Service Providers and Online Service Providers (collectively, "ISPs"); Original Equipment Manufacturers ("OEMs"); Internet Content Providers ("ICPs"); Independent Software Vendors ("ISVs"); and actual and potential corporate customers ("Corporate

Accounts”).

iii. Finally, I will discuss the consequences to Netscape and its browser products, as well as to the marketplace and consumers, of these harmful actions by Microsoft, as well as my thoughts on the essential elements of any remedy that would restore competition and consumer choice to this market.